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QM41/0609

EXAMINER	
SRIVASTAVA, V	
ART UNIT	PAPER NUMBER
3761	9

DATE MAILED: 06/09/99

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

Application No.	Applicant(s)		
08926788	Lewis et al		
Examiner	Group Art Unit		
V. Sewell	3761		

Period for Response

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

☒ Responsive to communication(s) filed on 3/22/99

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.**

☒ Claim(s) 1-8 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-8 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement.

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Part of Paper No. 9

Art Unit: 3761

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 - 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, there is an inconsistency between the preamble and the body of the claim, thereby making the scope of the claim unclear. Require that the applicant clarify what the claim is intended to be drawn to, i.e., either the backframe alone or the combination of backframe and a self contained breathing apparatus. Note in claim 1, lines 1/2, in the preamble the recitation "a self contained breathing apparatus" appears to be inferentially recited because of the use of the word "for" before the recitation. In claim 1, line 2, in the body "said self ... apparatus" is positively claimed.

In claim 1, line 1, the word "for" before "a self", in line 2 and line 11, "said" before "self".

In claim 1, lines 3/4, "the flow of air"; in line 4, lines 6/7 and line 14 "said air tank"; in lines 10/11 "said control components" all lack antecedent basis.

In claim 1, lines 5/6 the recitation "said rearward ... tank thereagainst" is unclear. How a rearward side being shaped and adapted without the defined shape of the air tank. This ambiguity renders the claim indefinite.

In claim 1, line 12, "said water tight enclosure" and "closure plate"

Art Unit: 3761

In claim 1, line 13 the use of the word "the" before "curvature" and "back" appears to be claiming the body parts, such as a specific back having a specific curvature are not patentable. It should be corrected by replacing the word "the" with --a--.

Note claims 3 - 8 for similar problems.

In view of the above inconsistency, the rejection is based upon, as if the claim is drawn to a backframe.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 - 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berndt (Pat. # 2,831,607) in view of Warncke et al (Patent # 3,390,676).

Berndt teaches a backframe which is illustrated in Figs. 1 - 4, for a breathing apparatus, comprising: a shell with a rear wall, side walls and a closure plate forming a water tight enclosure. Berndt is silent about shaping the shell of the backframe, but note the teaching of Warncke et al in Col. 2, lines (29 - 40). It would have been obvious to one of ordinary skill in the art in view of Warncke et al to have modified the shell of the backframe of Berndt to conform to the shape of

Art Unit: 3761

any breathing component and to conform to a curvature of a body of a wearer for the ease and comfort of carrying the backframe.

With respect to claims 2 and 3, note the hose (25), it appears that the use of a connector having male and female connectors either inside or outside of a shell of the backframe are well known in mechanical expedient in the breathing art and it would have been obvious to one of ordinary skill in the art to have selected such a connector as an ordinary selection among well known mechanical expedients.

With respect to claims 4 and 5, note the rejection under 112, 2nd paragraph as above.

With respect to claim 6, note the closure plates (11 and 12).

With respect to claim 7, note the rejection above of claims 2 and 3.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to V. Srivastava whose telephone number is (703) 308-0959.

vs 

June 2, 1999

John G. Weiss
Supervisory Patent Examiner
Group 3700